

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GERALD J. SCHOCK and DEPARTMENT OF THE AIR FORCE,
ELLSWORTH AIR FORCE BASE, SD

*Docket No. 01-1417; Submitted on the Record;
Issued February 5, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant is entitled to more than 8 weeks of compensation for his 15 percent employment-related binaural hearing loss.

The Board has duly reviewed the record on appeal and finds that appellant is entitled to more than eight weeks of compensation for his employment-related binaural hearing loss.

On June 18, 2000 appellant, then a 63-year-old plumber, filed a notice of occupational disease, Form CA-2, alleging that he sustained bilateral hearing loss in the course of his federal employment. Appellant stated that he first realized that it was caused or aggravated by his employment in 1983. Appellant's supervisor indicated that appellant had not stopped work but was last exposed to small gas powered concrete saw on February 9, 2000.

Accompanying the claim were several employing establishment audiograms and a noise survey.

The Office of Workers' Compensation Programs referred appellant, a statement of accepted facts and medical records to Dr. William P. Gibbons, a Board-certified otolaryngologist, for a second opinion. In a report received by the Office on January 19, 2001, Dr. Gibbons, after examination and audiometric testing performed for him on December 15, 2001, stated that appellant suffered from an employment-related, noise-induced bilateral sensorineural hearing loss.

In a January 22, 2001 report, a medical adviser of the Office applied the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* to the hearing threshold levels obtained on December 15, 2000 by Dr. Gibbons. Testing of the right ear at 500, 1,000, 2,000 and 3,000 hertz showed decibel losses of 20, 20, 60 and 65 respectively. Testing of the left ear at those same frequencies showed decibel losses of 20, 20, 30 and 65 respectively. The Office medical adviser determined that this testing revealed a monaural loss of 24.375 percent in the right ear and 13.125 percent in the left, or a binaural loss of 15 percent

according to the A.M.A., *Guides*. The Office medical adviser stated that the date of maximum medical improvement was December 15, 2000.

On April 5, 2001 the Office issued a schedule award for a 15 percent permanent impairment of both ears and awarded 8 weeks of compensation.¹ The award ran from December 15, 2000 to February 7, 2001 for a total of 7.80 weeks.

The schedule award provisions of the Act provide for compensation to employees sustaining permanent impairment from loss of use of specified members of the body.² The Act establishes a maximum of 52 weeks of compensation as the award for complete loss of hearing in one ear and 200 weeks of compensation as the award for complete loss of hearing in both ears.³ A partial loss of hearing is compensated at a proportionate rate,⁴ so appellant's award of compensation for a 15 percent binaural hearing loss entitled him to 15 percent of 200 weeks of compensation, or 30 weeks of compensation.

The Board finds that the Office medical adviser properly applied the appropriate standards to the findings provided by Dr. Gibbon's report and accompanying December 15, 2000 audiogram, resulting in a calculation of a 15 percent binaural hearing loss as set forth above. However, in calculating the number of weeks of compensation due, the Office calculated 15 percent of 52 weeks (the total weeks for 100 percent impairment of one ear) instead of 15 percent of 200 weeks (the total weeks for 100 percent binaural impairment). Therefore, the Office incorrectly concluded that the evidence established that appellant was entitled to no more than 8 weeks of compensation, as appellant is entitled to 30 weeks of compensation. The monetary amount is determined by taking the weekly pay rate, in this case \$717.61 and multiplying it by 75 percent to determine the weekly compensation rate of \$538.21. The \$538.21 is multiplied by the number of weeks of compensation, 30, for a total of \$16,146.30.

¹ 7.80 weeks was rounded to 8 weeks.

² 5 U.S.C. § 8107(c) and implementing regulation at 20 C.F.R. § 10.404.

³ 5 U.S.C. § 8107(c)(13)(A).

⁴ 5 U.S.C. § 8107(c)(19).

The April 5, 2001 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Dated, Washington, DC
February 5, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member